

EXHIBIT 30

In The Matter Of:
CHEVRON CORP v
STEVEN DONZIGER, ET AL

September 25, 2012

SOUTHERN DISTRICT REPORTERS
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1	UNITED STATES DISTRICT COURT		1	THE COURT: Yes.	
2	SOUTHERN DISTRICT OF NEW YORK		2	MR. LEADER: I would like to introduce to the Court	
3	-----x		3	the managing partner of Patton Boggs Ed Newberry. Obviously,	
4	CHEVRON CORPORATION,		4	his law firm has a substantial interest in today's proceedings	
5	Plaintiff,	11 Civ. 691 (LAK)	5	and he wanted to be here.	
6	v.		6	THE COURT: I gather. He will be more than welcome.	
7	STEVEN DONZIGER, et al.,		7	MR. LEADER: Thank you.	
8	Defendants.		8	THE COURT: Also on the subject of housekeeping, since	
9	-----x		9	this was scheduled, I drew a 34-defendant indictment in which I	
10		September 25, 2012	10	have to have an initial appearance at 2:30. So we are going to	
11	Before:	11:20 a.m.	11	go until the lunch break and then we will resume, depending on	
12		HON. LEWIS A. KAPLAN	12	what I'm told about whether it is really feasible to go for a	
13		District Judge	13	half hour or so before that starts, either right after the	
14	APPEARANCES		14	lunch break and then break again or resume after that	
15	GIBSON DUNN & CRUTCHER		15	conference, which will probably be done by about 3, if we are	
16	Attorneys for Plaintiff		16	not done by then.	
17	BY: RANDY MASTRO		17	MR. LEADER: Your Honor, I have a religious problem	
18	LAUREN ELLIOT		18	after 2 or 3 o'clock.	
19	PETER SELEY		19	THE COURT: Well, OK. So we will do the best we can	
20	ANNE CHAMPION		20	and just continue on another day.	
21	BILL W. THOMSON		21	MR. LEADER: I would appreciate that, your Honor.	
22	RICHARD MARK		22	THE COURT: All right. Now, before we get started	
23			23	this morning, I think it is useful to put what we are doing in	
24	GOMEZ LLC		24	context.	
25	Attorneys for Hugo Geraldo Cammacho and		25	I'm not going to dress the general background of the	
	Javier Piaguaje				
	BY: JULIO C. GOMEZ				
	- and -				
	SMYSER KAPLAN & VESELKA, LLP				
	BY: GARLAND "Land" D. MURPHY IV				
	LEADER & BERKON				
	Attorneys for Non-Party				
	Patton Boggs LLP				
	BY: JAMES K. LEADER				
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1	APPEARANCES CONTINUED		1	litigation. Everybody here knows it and, God knows, it has	
2	- also present -		2	been written about enough. But I do want to make a few points	
3	PATTON BOGGS LLP		3	within the narrative.	
4	Non-Party Respondent		4	First of all, we are concerned today with a subpoena	
5	BY: ERIC WESTENBERGER		5	duces tecum served on Patton Boggs, which has not appeared in	
6	EDWARD YENNOCK		6	this case in this court, but it is involved in litigation	
7	JONATHAN PECK		7	between Chevron and the Lago Agrio plaintiffs on behalf of the	
8		oOo	8	latter and, in addition, it has been the plaintiff and is the	
9	THE CLERK: Chevron against Donziger.		9	plaintiff in a number of lawsuits against Chevron on its own	
10	Counsel for plaintiff Chevron, are you ready?		10	behalf. I think one of those remains pending, though I am not	
11	MR. MASTRO: I'm ready, your Honor.		11	absolutely certain. In addition, Patton Boggs is named as a	
12	THE CLERK: Counsel for defendants Cammacho and		12	co-conspirator in an amended complaint in this case.	
13	Piaguaje, are you ready?		13	Secondly, the crux of the dispute over the subpoena is	
14	MR. MURPHY: Yes, your Honor. We are ready.		14	essentially twofold. The first part of it is whether the	
15	MR. GOMEZ: Yes, your Honor.		15	documents sought are all or substantially all protected from	
16	THE CLERK: And counsel for Patton Boggs, are you		16	disclosure by attorney-client privilege or the work product	
17	ready?		17	doctrine and whether compliance with the subpoena or, for that	
18	MR. LEADER: Yes, we are.		18	matter, even production of a privilege log would be unduly	
19	THE COURT: Mr. Leader, right?		19	burdensome. For reasons already discussed in my	
20	MR. LEADER: Yes. Good morning, your Honor.		20	August 24th decision, the privilege and work product claims in	
21	THE COURT: Long time no see.		21	some respects cannot properly be evaluated without a privilege	
22	MR. LEADER: Yes, sir.		22	log.	
23	THE COURT: Nice to see you again.		23	Thirdly, there are substantial disputes, at least in	
24	MR. LEADER: Thank you, your Honor. Nice to see you		24	number, as to the proper scope of the subpoena considered	
25	as well.		25	without regard to questions of privilege and burden. Patton	
	Could I have just one housekeeping matter before we				
	start the formal proceeding?				

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1	Boggs has served 186 pages of objections to the 52		1	might, after any production that ultimately is ordered has been	
2	specifications of the subpoena. It would be most sensible to		2	made, appear in a different light. To the extent that I may	
3	resolve those issues before definitively addressing the		3	modify or limit the scope of or sustain objections to	
4	privilege and, in some respects, the burden claims, as the		4	individual specifications today, those rulings will be without	
5	resolution of the specific objections in the 186 pages could		5	prejudice to the plaintiff later seeking to require broader	
6	well alter the breadth of the material sought, affect the		6	compliance in light of production that's actually made. It	
7	alleged burden, and focus the subpoena on the most important		7	should be clear, however, that I do not intend to order further	
8	matters.		8	production likely, and no such request should be made or likely	
9	With that in mind, I am going to try to deal with the		9	would be granted unless there is a very convincing reason.	
10	objections to the subpoena in this framework.		10	If it is at all possible, we should do this enterprise	
11	First, Patton Boggs has interposed close to 37 pages		11	once -- not more than once.	
12	of general objections and objections to definitions and		12	Finally, I'm commencing this process of attempting to	
13	instructions in the subpoena. With two exceptions, I don't		13	hear argument on the objections to individual specifications in	
14	think oral argument will be helpful to me in ruling on those		14	the hope that it's going to be efficient and helpful. I must	
15	objections. I am going to rule on them shortly. We are not		15	say that given the manner in which the parties -- and I mean	
16	going to deal with them today, except for general objections 8		16	"the parties" -- and the lawyers for the parties -- and I mean	
17	and 9, which address contentions by Patton Boggs that it should		17	"for the parties" -- have behaved thus far in this and related	
18	not be obliged to collect, produce or log documents from		18	litigation, I really have substantial doubt that we're going to	
19	attorneys and professionals working fewer than 50 hours on the		19	get anyplace worth getting by this process. If I come to the	
20	Chevron litigation and, in some respects, from legal		20	conclusion that this is not efficient, or not helpful, I'm	
21	secretaries.		21	going to terminate these arguments, and I'll rule on the	
22	Secondly, there is one respect in which we will		22	objections without oral argument. I do not intend the oral	
23	address burden questions. To the extent there are claims of		23	argument to add to the confusion and waste of time. I hope to	
24	undue burden that are enumerated in the 186 pages and that are		24	cut through it.	
25	unique to individual subpoena specifications, as distinguished		25	With that in mind, let's proceed. And we'll start	
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1	from a claim that the overall burden of complying with the		1	with general objection 8, which is on page 7 of the Patton	
2	subpoena would be undue, I intend to resolve them.		2	Boggs responses and objections to the subpoena.	
3	Third, it ought to be clear that at least to a very		3	As I understand it, the fundamental dispute here is	
4	substantial degree, and possibly -- well, strike "and		4	that Patton Boggs proposes to collect documents, which, as I	
5	possibly" -- what we are really talking about here is, in the		5	understand it in the present posture, means a log for privilege	
6	first instance, and today, in major part, is how extensive the		6	in the main, only from attorneys and professionals who have	
7	privilege log needs to be and on the basis of how extensive a		7	worked 50 or fewer hours -- or I misstated that slightly -- who	
8	search.		8	have worked less than 50 hours on the Chevron litigation. The	
9	Fourthly, it ought to be plainly understood that I'm		9	plaintiff, as I understand it, doesn't accept that limitation,	
10	approaching this, first and foremost, with Rule 26(b)(2)(C) in		10	at least without a list of who would be excluded by it.	
11	mind. That gives district courts discretion to limit the		11	Is that a fair statement of where you two are?	
12	extent of discovery, even of relevant matters, for several		12	MR. MASTRO: Your Honor, actually, we've agreed to the	
13	reasons. One of them is that its burden or expense outweighs		13	50-hour limit, and we've received a list that we are reviewing.	
14	its likely benefit, considering the needs of the case, the		14	THE COURT: Bless you. We will move on.	
15	amount in controversy, the parties' resources, the importance		15	I take it, Mr. Leader, that is correct; is that right?	
16	of the issues at stake, and the importance of the discovery in		16	MR. LEADER: Yes, your Honor.	
17	resolving the issues.		17	THE COURT: All right.	
18	Unless I otherwise indicate, the rulings that I make		18	MR. MASTRO: Progress already, your Honor.	
19	should be understood as practical judgments about the		19	THE COURT: Well, this is -- I won't say. We'll move	
20	appropriate scope of the subpoena in light of these		20	on to general objection number 9, which has to do with	
21	considerations in the present posture of the case, rather than		21	documents from legal secretaries.	
22	rulings as to relevance as a purely legal matter of the		22	What Patton Boggs' objection is is that it does not	
23	material sought.		23	wish to collect electronic documents of legal secretaries that	
24	Fifth, I understand that the specifications, that at		24	primarily used and relied on Patton Boggs' firm-wide document	
25	the moment might seem to go beyond what seems productive,		25	management computer applications.	

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1	What's the problem, Mr. Mastro?		1	their authority from, and how they have been exercising it.	
2	MR. MASTRO: Your Honor, again, I think we have		2	So we think that the scope of potentially relevant	
3	reached the point of substantial agreement.		3	documents is broader than just a redacted retention agreement.	
4	All we have asked is that they confirm that the		4	So we think they probably have had other exchanges on this very	
5	secretaries on this matter have not maintained documents		5	subject of Mr. Fajardo, Mr. Donziger. It would be interesting	
6	separately in some fashion or data separately from the firm's		6	to see if they had any exchanges with their so-called clients.	
7	server, and as long as we have that confirmation -- and they		7	I think we have a right to get those documents to see if they	
8	have thus been confirming that -- which ultimately they don't		8	even exist and if they've ever even had any communication with	
9	have to serve secretaries.		9	their clients.	
10	THE COURT: Is that agreed, Mr. Leader?		10	So we think it is definitely broader, your Honor, than	
11	MR. LEADER: Yes, your Honor.		11	just a redacted retention agreement.	
12	THE COURT: OK. That takes care of that.		12	THE COURT: Ms. Young.	
13	You see, we're already up to page 37.		13	MS. YOUNG: What Mr. Mastro has just described goes	
14	Document request number 1. Where are we on this?		14	exactly to how Patton Boggs conducts this litigation, what	
15	MS. YOUNG: Your Honor, I can speak to that. Alyssa		15	interactions it has with various parties related to the	
16	Young with Patton Boggs.		16	litigation, and basically how the work is divided up and done.	
17	Patton Boggs has agreed to provide a retainer		17	That goes right to the heart of privileged work product	
18	agreement with its clients redacted of any privileged		18	materials, and, frankly, they have very little to do with this	
19	communications or work product. It was unclear in the		19	case and more to do with trying to invade Patton Boggs' files	
20	meet-and-confer what other documents Chevron is looking for,		20	to understand how its strategy works.	
21	but that is what Patton Boggs has agreed to produce at this		21	MR. MASTRO: Your Honor, may I add one thing?	
22	point.		22	THE COURT: Briefly.	
23	THE COURT: Mr. Mastro, what else do you want? And		23	MR. MASTRO: Yes. This again -- and I think this is	
24	why?		24	going to come up time and time again -- really goes to a	
25	MR. MASTRO: Sure. Your Honor, we believe that the		25	logging issue and whether they should have to collect the	
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1	retention agreement redacted will not cover the entirety of the		1	documents. And if they think that they are privileged, put	
2	scope of the request. We're concerned about the scope of		2	them on a log and we have already, you know, to try to bridge	
3	Patton Boggs' authority to represent or act on behalf of the		3	the gap here, agreed to categorical logging in the fashion that	
4	LAPs. We think it is relevant to the fraud and conspiracy		4	they requested.	
5	claims. We think there are serious questions about whether		5	So, really, the objection here doesn't go to the	
6	Patton Boggs has properly, even acting on behalf of the LAPs,		6	relevance of the information, it goes to whether they are going	
7	are they really acting more on behalf of itself, other law		7	to have a valid privilege claim, and that should be logged and	
8	firms and financiers? And, therefore, we think that it's		8	in a categorical log. And if there are rulings later on	
9	important in that regard to know whether they are properly		9	whether they have a privilege there and whether there is an in	
10	authorized.		10	camera review, the documents will be there for production or	
11	It also goes directly to personal jurisdiction issues		11	for your Honor to review.	
12	and whether agents of the LAPs have been acting on their behalf		12	THE COURT: Suppose, Ms. Young, that this request were	
13	in New York and that Patton Boggs is an appropriate agent.		13	modified on the basis I indicated before, that is to say,	
14	We think this goes to really, you know, the heart of		14	without prejudice, to read all documents discussing,	
15	the RICO conspiracy and the fraud claims, whether persons are		15	conferring, or evidencing your authority; doesn't that solve	
16	acting with or without authority and what they're doing. So we		16	the problem you claim exists?	
17	think it is not just the retention to deal with, your Honor, it		17	MS. YOUNG: Does your Honor mean to exclude work	
18	is also the other exchanges that have occurred about what		18	product and other documents in which Patton Boggs analyzed	
19	they're authorized to do or not authorized to do and by whom.		19	Chevron's allegations that it had acted outside of its	
20	And your Honor will recall that this became an		20	authority?	
21	important issue at an earlier point in time even before the		21	THE COURT: No.	
22	RICO case about whether certain of the lawyers who have been		22	MS. YOUNG: Without that limitation, I believe the	
23	running around the world supposedly acting on behalf of,		23	request would still be impermissibly broad and likely to get at	
24	quote-unquote, indigenous people are really authorized to act		24	documents that are subject to privilege.	
25	on their behalf. We even know those people, where they get		25	THE COURT: Yes. But you understand that I'm not	

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1	passing on privilege questions today. So on that basis I'm		1	drafting. There are -- and subsequent motions about cleansing	
2	going to modify it without prejudice, as I indicated, and then		2	the -- I'm sorry. We know that they made certain choices to	
3	otherwise overrule the objection; that is, I overrule the		3	take things out. We want the documents that reflect their	
4	objection to the request as modified.		4	involvement, how that came about, what choices were made to try	
5	OK. Number 2, which I gather the parties have already		5	and show what wasn't part of the court record, what was part of	
6	agreed in one respect is modified by striking the words "actual		6	the court record, and their knowledge of what was not actually	
7	or potential."		7	submitted on the record but nevertheless must have made it to	
8	MR. MASTRO: Correct, your Honor.		8	the Court anyway.	
9	THE COURT: OK. What is the essence of the dispute?		9	Number two. They are also the party that drafted what	
10	MR. MASTRO: Well, your Honor, we are seeking		10	we call the cleansing memo or motion. That's the one where	
11	documents in which Patton Boggs was involved in the preparation		11	they made application to the Court in mid-2010 to say to the	
12	of briefs, motions, pleadings in connection with the Lago Agrio		12	Court, on the eve of the Stratus documents coming out, Patton	
13	litigation or the Lago Agrio appeal. The relevance of it, your		13	Boggs does the drafting of the submission that was made by the	
14	Honor, we think goes to the heart of the case. Patton Boggs is		14	LAPs in Ecuador to permit them to put in cleansing experts to	
15	a named co-conspirator, and we have argued that, and provided		15	try and paper over and cleanse the Cabrera fraud. So we want	
16	evidence to the Court, that the manner in which the judgment		16	to see their documents on that process, what they knew, what	
17	was procured and the ways in which the judgment was written		17	their colleagues knew, the admissions that they were making.	
18	reflect that it was in fact ghostwritten and there was		18	We do have some documents in this regard, your Honor, but we	
19	involvement on the plaintiff's side, including the plaintiffs'		19	don't have their internal documents, and we don't necessarily	
20	lawyers, in that process. Patton Boggs actually played an		20	have all of the communications. It was by tooth and nail and	
21	integral role in the briefing -- the final briefing, called the		21	only production of the hard drive that we got what we did from	
22	alegato, and differences between that final briefing and the		22	Donziger.	
23	judgment and the changes in the earlier drafts that show up		23	So we don't certainly think we have the full universe	
24	nevertheless in the final judgment, meaning the work product of		24	that tells that story, the story of coming on the case --	
25	the plaintiffs that was never submitted to the Court, that		25	knowing the case was falling apart because the Cabrera fraud	
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1	Patton Boggs edited and knows wasn't submitted to the Court,		1	was about to be revealed, Patton Boggs coming on the case and	
2	nevertheless shows up in the judgment.		2	drafting a critically important document to be submitted to the	
3	Your Honor, we think that their role then in trying to		3	Ecuadorian Court to be able to put in these so-called cleansing	
4	style those briefs what it knew or didn't know in the drafting		4	experts, who turned out to be just derivative of Cabrera to try	
5	process --		5	to paper it over.	
6	THE COURT: I'm sorry. I'm confused. The argument is		6	So for both of those reasons, both in the judgments,	
7	that if you get at their drafts, the drafts may provide		7	ghostwriting fraud, and in the context of this really, you	
8	evidence that there is a remarkable similarity between drafts		8	know, fraud on the process to try and paper over Cabrera as the	
9	that were not filed and portions of the judgment; is that about		9	fraud was unraveling, Patton Boggs was there at the heart of	
10	it?		10	it. And we want to see their documents that reflect their	
11	MR. MASTRO: That's not the entirety of it, but, yes,		11	preparation, their involvement, what they knew, what other	
12	that is a major part of it.		12	people knew, and what they were saying about these things as	
13	THE COURT: That is part of it.		13	they did them.	
14	MR. MASTRO: Their involvement in the drafting -- and		14	THE COURT: What about the appeal?	
15	they were involved in the redrafting of the final brief, the		15	MR. MASTRO: Yes. Well, your Honor, that's important,	
16	final statement of the case that's submitted to the Court, so		16	too, because, you know, we don't have transparency into the	
17	it is referred to as the closing argument, those rewrote that		17	process since the Donziger documents only go up to a point in	
18	brief. The draft contained literally whole sections of		18	early February. We don't have transparency about the	
19	material that Patton Boggs took out of the final product that		19	judgment's aftermath. Yet there have been many questions	
20	was submitted to the Court that nevertheless somehow show up		20	raised about the motions that were submitted. Patton Boggs, we	
21	almost word for word in the judgment.		21	believe, participated in the preparation of them to try and fix	
22	THE COURT: Yeah, I got that. But you tell me you		22	problems in the judgment, anticipating attacks later. They win	
23	know that now.		23	the case --	
24	MR. MASTRO: We know those pieces. These are the		24	THE COURT: My question was what about the appeal?	
25	documents about their involvement in the preparation of		25	Documents relating to submissions --	

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1	MR. MASTRO: And on the appeal, your Honor, questions		1	MR. MASTRO: Your Honor, it emerges starkly in	
2	about the composition of the panel and how the appellate panel		2	May 2010 and really continues thereafter.	
3	went about doing its work, because the trial judge who issues		3	Patton Boggs, under a draft retention agreement that	
4	the judgment is also the judge who basically oversees who was		4	we saw, says they are to be primarily responsible for U.S. and	
5	on the appellate panel. And there are a lot of issues about		5	non-Ecuadorian litigation. Yet, it appears that from May 2010	
6	the continue manipulation and ghostwriting that occurred even		6	on they were integrally involved in the key briefing in	
7	after that, and we need to see -- it will actually be our first		7	Ecuador, the cleansing expert request relating to the final	
8	chance to see the role of the plaintiffs' team in how there		8	alegato and the judgment, and then subsequently, post-judgment	
9	were modifications to the judgment and then how the appellate		9	and on appeal, it appears that they were involved including	
10	process worked and the role they played in helping to craft or		10	even moving for clarification on the fraud issue to try and	
11	cause the crafting of the appellate opinion. We have had no		11	improve their prospects in enforcement later when they had won.	
12	transparency there.		12	Apparently in Ecuador you can make motions when you win to say	
13	THE COURT: Ms. Young or Mr. Leader?		13	I would like even better language in my opinions.	
14	MS. YOUNG: I would like to point out that the request		14	THE COURT: It has been known to happen in America,	
15	is actually directed to all documents related to Patton Boggs'		15	too.	
16	involvement in the preparation of any brief, any motion, any		16	MR. MASTRO: It can't happen quite so transparently,	
17	pleading in connection with the Lago Agrio litigation.		17	your Honor. I don't think that I could move to appeal a	
18	Mr. Master just spoke to two or three examples of		18	complete victory because I wanted some little better language	
19	specific documents that were filed, and, in fact, Patton Boggs		19	in an opinion. But in any event, I'm just saying that it's	
20	requested such a list from them during the meet-and-confer. It		20	really, you know, the beginning of May 2010 on that it appears	
21	is still obvious that we had privilege issues with this		21	Patton Boggs took over in substantial respects briefing and	
22	document request. And, of course, Patton Boggs denies the		22	engineering the strategy, too. The first 1782 was filed in	
23	allegations put forth by Mr. Mastro and --		23	late 2009 in this case.	
24	THE COURT: OK. Look, in the interest of not having		24	THE COURT: Hold on a second while I look something	
25	this repeated every time -- and I don't mean to be unkind -- I		25	up.	
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1	know, as well as you do, that there are privilege issues that		1	(Pause)	
2	I'm not ruling on today, and what we're talking about today is		2	All right. So we are talking here about the time	
3	the scope. So let's just save the time of talking about the		3	period from early 2010 until whatever ultimately the cutoff is.	
4	privilege issues, except to the extent, if we ever get to an		4	Now, you've identified, Mr. Mastro, the alegato.	
5	appropriate point, where we did some appropriate narrowing that		5	You've identified what else specifically?	
6	might in one degree or another reduce or minimize any questions		6	MR. MASTRO: Your Honor, I identified the cleansing	
7	about privilege. OK?		7	motion, to be able to submit cleansing expert reports, which	
8	MS. YOUNG: OK. Understood.		8	was filed in mid-2010. I've identified the alegato, which I	
9	Also, to the extent that Mr. Mastro is asking for		9	believe was filed in December of 2010, and I've identified the	
10	documents that aren't in the court record, he can certainly --		10	post-judgment motion practice, the appellate briefing, and the	
11	he is certainly aware of the court record in Ecuador and		11	post-appellate decision motion practice, all which went to	
12	doesn't need Patton Boggs' documents to show that.		12	trying to manipulate or change the language.	
13	THE COURT: No. But he is not asking you to produce		13	And I would just add one thing, your Honor. This is	
14	documents from the court record in Ecuador. He is asking you		14	going to come up again and again, so I am really trying to cut	
15	to produce documents related to Patton Boggs' involvement in		15	through things. They're going to repeatedly raise we should	
16	the preparation of various documents, which is a separate		16	have provided them a list of what we know --	
17	matter.		17	THE COURT: Let's deal with it if, as, and when we get	
18	MS. YOUNG: Understood. And that goes to virtually		18	it. OK?	
19	everything that Patton Boggs did in the course of the		19	MR. MASTRO: No problem. But they raised it here,	
20	Ecuadorian litigation.		20	too, that we should give them a list. They know which list --	
21	THE COURT: Now, Patton Boggs' involvement dates to		21	THE COURT: OK. Again, without prejudice, as I've	
22	exactly when?		22	indicated -- and I'm going to stop repeating that -- we're	
23	MS. YOUNG: Early 2010.		23	going to modify this, at least temporarily, to documents	
24	THE COURT: Mr. Mastro, when in your submission does		24	relating to Patton Boggs' involvement in the preparation of the	
25	the risk of Cabrera being discredited emerge?		25	alegato, the so-called cleansing motion, as defined by	

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1	Mr. Mastro, and any post-judgment motion or avocation, and		1	MR. MASTRO: Your Honor, here we're seeking documents	
2	otherwise the objection is going to be sustained for the time		2	relating to travel to certain countries where we're already	
3	being.		3	aware, or have reason to believe, might be subjects of	
4	OK. Number 3. Have you reached agreement on this, I		4	enforcement actions. There have already been enforcement	
5	hope?		5	actions filed in Brazil and Canada.	
6	MS. YOUNG: I think the only disagreement remaining on		6	To us, your Honor, this goes to an essential part of	
7	this is whether Patton Boggs can create one travel log, or		7	the conspiracy that Patton Boggs came on to the case to	
8	Chevron has demanded a separate log, signed under penalty of		8	execute. This is the Invictus enforcement strategy. This is	
9	perjury, by each Patton Boggs' attorney who traveled to Ecuador		9	the extortion shakedown pressure strategy. This is -- these	
10	identifying -- and they're asking for a whole host of		10	are the documents that relate to the travel that goes to the	
11	information -- meetings, start and end times, locations,		11	very heart of that. So we think its relevance to the RICO and	
12	attendees, photographs, video recordings.		12	fraud case are evident, and we think we are entitled to get	
13	I think what we offered to do was to put forth a		13	them.	
14	single log identifying Patton Boggs' lawyers who traveled to		14	Patton Boggs objects in its entirety. Some of these	
15	Ecuador in connection with the Chevron litigation, dates of		15	things in the travel records wouldn't be subject to any kind of	
16	travel, and cities or towns visited.		16	privilege claim anyway, but to the extent they have a privilege	
17	THE COURT: Mr. Mastro.		17	claim, they put it on the categorical log. But they've just	
18	MR. MASTRO: I think, your Honor, the only area of		18	object categorically to this, and we think it is clearly	
19	disagreement at this point is what that log would look like.		19	relevant and we are entitled to see it.	
20	We wanted not only arrival and departure dates and the		20	THE COURT: I am going to sustain that objection.	
21	identification of the Patton Boggs' lawyers but who they met		21	Number 5. Ms. Young, these people are asserting	
22	with, who were at these meetings. Were they meeting with a		22	jurisdictional objections in the case of the two who have	
23	judge? Were they meeting with others in Ecuador? And if they		23	appeared. It seems relevant more broadly than that. Why	
24	are able to provide it, the basic durations of the meetings.		24	shouldn't you produce this?	
25	So we think it's a positive step that they will		25	MS. YOUNG: Your Honor, we have asked Chevron to -- we	
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1	identify when they went to Ecuador and who from Patton Boggs		1	have agreed that we will perform a reasonable search for these	
2	went there, but we want to know who they met with and for how		2	documents, and we've suggested ways in which to go about doing	
3	long. It seems to me that that's the key information that we		3	that.	
4	are entitled to as well in trying to determine what they were		4	Searching a set of e-mails, you know, dealing with	
5	doing.		5	other people's travel, it's difficult to come up with a search	
6	THE COURT: What about that, Ms. Young?		6	that would potentially target those documents. I think -- the	
7	MS. YOUNG: I think it's-- Chevron wants to know did		7	example that Chevron has used is if there is an internal	
8	we meet with a judge, did we -- you know, in keeping with their		8	communication at Patton Boggs referring to Pablo Fajardo coming	
9	allegations that we did any improper activity, I think we can		9	to the United States for a meeting, that's what they are	
10	certainly respond to that that we did not.		10	looking for, and we have suggested that we come up with some	
11	THE COURT: I would rather imagine that most parties		11	search terms that might be designed to get at that information.	
12	accused of misconduct are perfectly prepared in discovery to		12	The problem is that Chevron has been unwilling to	
13	say you don't need discovery, we didn't do it, and you should		13	engage in that discussion on what it will accept as a	
14	just accept our word for it. So we're not going down that		14	reasonable search for these types of documents.	
15	course of an approach.		15	THE COURT: These are two separate questions. One	
16	And, furthermore, as I'm sure you know, the crime		16	question is whether the request is appropriate. The second	
17	fraud exception doesn't even require misconduct by the attorney		17	question is, given the respondent's obligation to make a	
18	in order to pierce the privilege, if indeed there is such a		18	reasonable search, what is a reasonable search?	
19	privilege, with respect to anything here.		19	I overrule the objection. Now, the parties are going	
20	And so I'll go along with the one log concept, and the		20	to have to work it out, or if you can't, the Court will decide	
21	log is to contain the identity of each attorney, the arrival		21	what a reasonable search is.	
22	and departure dates of each trip, and with respect to each		22	I understand there are always problems in designing	
23	meeting relating to the case in any way the dates and times and		23	search terms and the like, and in electronic discovery, as in	
24	durations and participants.		24	all other things in life, perfection, desirable as it may be,	
25	OK. Number 4. Mr. Mastro, how do you justify this?		25	is not always achievable.	

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1	OK. Number 6.		1	as a result if they were able to collect on the entirety of	
2	I see that that follows, unless I hear good reason to		2	that judgment for that firm. And it goes to, you know, the	
3	the contrary, the ruling I made with respect to number 4. Any		3	individuals or financiers who were recruited to either join the	
4	reason why not, Mr. Mastro?		4	conspiracy as active participants or, in some cases, including	
5	MR. MASTRO: Your Honor, I think it would be		5	Burford and Joe Kohn, who backed out at some point -- Joe Kohn,	
6	controlled by your ruling on number 4, but when it comes to		6	as we say, with noise. So we think that this really will be	
7	documents relating to the enforcement actions, I would like to		7	highly relevant to the RICO conspiracy and its scope, structure	
8	be heard more on that, as opposed to the travel documents, and		8	and membership.	
9	then we will come to those later requests.		9	THE COURT: Is there any dispute that Patton Boggs has	
10	THE COURT: Then we will deal with it then.		10	a contingent fee arrangement and has a nine-figure benefit to	
11	MR. MASTRO: Thank you, your Honor.		11	be gained if and to the extent the judgment is collected?	
12	THE COURT: Number 7 has been withdrawn by Chevron.		12	MR. MASTRO: There is not, your Honor.	
13	What remains in dispute as to this?		13	THE COURT: You are not in a position to answer that.	
14	MS. YOUNG: Patton Boggs has agreed to produce power		14	MR. MASTRO: Sorry, your Honor.	
15	of attorney documents. I'm not sure what else is at issue.		15	(Pause)	
16	THE COURT: Including drafts?		16	MS. YOUNG: Excuse me, your Honor. I just need to	
17	MS. YOUNG: Drafts would -- we would have the same		17	confer with my client.	
18	problem with work product, but I believe we could log those.		18	THE COURT: I understand.	
19	MR. MASTRO: OK.		19	(Pause)	
20	THE COURT: OK. So the objection is overruled,		20	MR. MASTRO: Your Honor, could I add just one more	
21	except, of course, that identical -- well, what about this?		21	thing while she is conferring?	
22	Let me raise the question.		22	THE COURT: No. Let's do one thing at a time.	
23	Shouldn't this exclude or should it exclude identical		23	MR. MASTRO: No problem, your Honor.	
24	copies of documents that were produced -- actually produced in		24	(Pause)	
25	the 1782 case against Mr. Donziger?		25	MS. YOUNG: Your Honor, Patton Boggs is not	
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1	MS. YOUNG: We don't currently have that production so		1	comfortable with discussing the financial arrangements relating	
2	Chevron would need to identify those for us.		2	to its potential payment from this litigation.	
3	MR. MASTRO: Well, your Honor, we don't have a problem		3	THE COURT: Well, I mean, you may have your choice	
4	with that. So, you know, but it is not clear to us in terms of		4	between getting comfortable with it or producing all the	
5	burden and everything else, you know, should we give them		5	documents about it.	
6	everything in the Donziger production that relates to this		6	MS. YOUNG: We've agreed to produce the retainer	
7	issue? Is that how they --		7	agreement, and I believe it will be redacted of sensitive	
8	THE COURT: This is really, I guess, silly.		8	financial information.	
9	MR. MASTRO: Right. I don't want to --		9	THE COURT: Well, that's your version. I don't see	
10	THE COURT: Because, obviously, I mean, Mr. Donziger		10	any basis for that redaction.	
11	represents these people and you are working -- not you, Leader		11	MS. YOUNG: The --	
12	& Berkon, but you Patton Boggs are working hand and glove with		12	THE COURT: So maybe you can persuade me.	
13	the Keker firm, or at least that's the only logical assumption		13	MS. YOUNG: The funding arrangements as it relates to	
14	to draw, and so I will just overrule the objection. You are		14	Patton Boggs, that has no bearing on the RICO litigation.	
15	perfectly able to find out what was in these things.		15	THE COURT: It has to do with motive, doesn't it?	
16	Number 9.		16	MS. YOUNG: Patton Boggs isn't a defendant in the RICO	
17	(Pause)		17	litigation.	
18	Anybody wish to address it?		18	THE COURT: It is an alleged co-conspirator, isn't it?	
19	MR. MASTRO: Your Honor, again, we think this goes to		19	Right in the complaint.	
20	the heart of the RICO claim because these documents potentially		20	MS. YOUNG: Understood, your Honor.	
21	relate to membership in the conspiracy, its scope, its		21	(Pause)	
22	structure, the motives of individuals and their interests,		22	At a minimum, your Honor, Patton Boggs requests a	
23	including the Patton Boggs firm which recruited certain of the		23	protective order, a confidentiality order so that the	
24	funders, including Burford. The Patton Boggs firm, which has a		24	information relating to its payment or potential payment is not	
25	contingency arrangement that should generate over 400 million		25	disclosed outside of this litigation.	

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1	THE COURT: Any problem with that, Mr. Mastro?		1	Patton Boggs will show why Burford stopped funding. But it did	
2	MR. MASTRO: Your Honor, there has already been		2	provide millions in seed capital at Patton Boggs' behest, based	
3	disclosures with no protective order that give that amount. I		3	on representations like those in Invictus about the so-called	
4	don't have any problem with a protective order, that I won't		4	merit of what they were going to try to do, that, you know,	
5	reveal what they say they'll get out of the litigation.		5	funded the enterprise, kept the scheme going, gave them the	
6	MS. YOUNG: Your Honor, if the plaintiffs already have		6	lifeblood capital they needed. And if those parties -- some of	
7	this information, why does it need to come from Patton Boggs		7	those parties -- I can't say whether that is going to be the	
8	again?		8	case for Burford, but we think we have a good faith basis	
9	THE COURT: Do you know that the United States		9	arising from the discovery, and of others, you know, were	
10	government takes the position that terrorists who have been		10	induced to fund, to keep this thing going, the scheme going,	
11	held in certain foreign countries, as reported by every media		11	and later came to realize they had been hoodwinked. That's	
12	outlet in the world, are in the position where the government		12	third-party fraud. That's extremely relevant to the RICO. So	
13	will not confirm nor deny which foreign countries even though		13	we believe we're entitled to those documents.	
14	everybody in the world knows it? Do you understand that? And		14	THE COURT: Ms. Young.	
15	the reason it doesn't is because they don't want to be bound by		15	MS. YOUNG: I think that's pure speculation as to why	
16	the admission, which is why you don't want to be bound by the		16	somebody stopped providing funding or continued. And, again,	
17	admission. But the admission is relevant in the lawsuit. And		17	the fact of someone funding or not funding, we are OK with	
18	for them to say somebody else said that Patton Boggs' interest		18	disclosing that. You know, the discussions back and forth	
19	is X is different from Patton Boggs saying it or producing the		19	touching on the merits of the case or anything else we think	
20	documents.		20	should be off limits.	
21	Now, let's use this time productively. Is there any		21	THE COURT: Well, why? It is not exactly privileged,	
22	problem with a protective order of the standard garden variety		22	is it, even if there is a privilege?	
23	form that would enable them in the first instance to designate		23	MS. YOUNG: Well, there may be work product revealed	
24	that piece of information as for use in this litigation only		24	in those discussions, yes, about strategy, about planning,	
25	and would not restrict you, Mr. Mastro, as in all other cases,		25	about --	
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1	if you have that information from someplace else, using it?		1	THE COURT: Which may very well blow even the work	
2	MR. MASTRO: And I said, it will be fine with me, your		2	product protection.	
3	Honor.		3	MS. YOUNG: I believe --	
4	THE COURT: OK. So that solves that problem, right,		4	THE COURT: Because you are dealing with an adverse	
5	Ms. Young?		5	party at arms' length.	
6	MS. YOUNG: Understood, your Honor. Yes.		6	MS. YOUNG: Well, I think it is actually the opposite,	
7	THE COURT: OK. Now, what about the limitation to		7	that they have a common interest in the litigation if they're	
8	executed funding agreements?		8	funding it.	
9	MR. MASTRO: Your Honor, the reason why it shouldn't		9	THE COURT: Maybe not if they are pulling out. Maybe	
10	be limited to executed funding agreements is because part of		10	not if they say no. Maybe not until they decide to fund it.	
11	the fraud -- part of the third-party fraud is that		11	MS. YOUNG: It is a collateral issue. It is	
12	misrepresentations by Patton Boggs and others on the		12	speculative. If we're trying to reduce the scope of the	
13	plaintiff's team were made to induce people to fund the		13	subpoena, you know, I don't think there is any meaningful	
14	litigation. In some cases they decided not to, because they		14	information that's going to come out of that inquiry.	
15	concluded not to. In other cases they decided to and later		15	THE COURT: I am going to come back to that one. I	
16	withdrew, apparently because they considered themselves to have		16	will think about that a little more.	
17	been defrauded. So we think we should be able to get documents		17	Number 10.	
18	that go to their efforts to induce funders as well as the		18	MS. YOUNG: 10 is the identical problem. It just	
19	funding agreements themselves.		19	lists names.	
20	THE COURT: And how is that relevant to whether they		20	THE COURT: Is that right?	
21	did what you claim they have done to Chevron?		21	MR. MASTRO: These are all parties we believe that are	
22	MR. MASTRO: Because, your Honor, take a Burford as an		22	related to funding issues. Your Honor, if I may suggest one	
23	example. We believe that since Burford cut off its funding --		23	other thing that might help you resolve 9 and 10?	
24	and of the limited documents we have seen, we have seen that		24	From the documents we have seen, that we have been	
25	they are now in some controversy -- we hope the discovery from		25	able to obtain in discovery, we see the breakdown between the	

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1	plaintiffs and Burford, and we have seen from the plaintiff's		1	THE COURT: And why are you entitled to all documents	
2	side some hostile exchanges with Burford when Burford withdrew		2	relating to him?	
3	its funding. There must be Burford letters to the plaintiffs,		3	MR. MASTRO: He is a person who both participated in	
4	and we believe they will show exactly what we need to prove,		4	helping them arrange funding and also served as a consultant --	
5	third-party fraud and --		5	as we understand it, a consultant to the LAPs on the foreign	
6	THE COURT: Yes. But you haven't persuaded me yet		6	enforcement or Invictus strategy.	
7	that evidence that third-party investors were snookered, if		7	THE COURT: Sustained.	
8	indeed that's the case, is particularly probative of anything		8	MR. MASTRO: Your Honor, may I just ask one more	
9	in this case.		9	question?	
10	MR. MASTRO: But, your Honor, it is critically		10	THE COURT: Yes.	
11	important, because without that money -- without that seed		11	MR. MASTRO: In terms of the limited production on 9	
12	money from Burford, we think the documents will show Patton		12	and 10, I would strongly implore your Honor that if there are	
13	Boggs never would have gotten involved in this case and not		13	exchanges with Burford that would reflect that Burford backed	
14	gotten the seed money, because they had a mixed-fee contingency		14	out of the funding agreement because they felt they were	
15	fee arrangement.		15	defrauded, that that would be highly relevant.	
16	THE COURT: Without the word processor, they couldn't		16	THE COURT: Nobody is stopping you from taking	
17	have gotten involved either and we are not examining IBM.		17	Burford's deposition and let's see where that goes, if you	
18	MR. MASTRO: No. But, your Honor, I do believe this		18	decide to do it.	
19	is actually critically important, because it was the going out		19	MR. MASTRO: All right. We will, your Honor. We	
20	and obtaining of funders, sometimes who became co-conspirators,		20	will.	
21	sometimes who later felt they were duped and were part of a		21	THE COURT: Number 12.	
22	third-party fraud, it was the only reason they could sustain		22	MS. YOUNG: Number 12. Nextant is, I believe, under	
23	the action they way they did and litigate all around the world		23	Snaider's company.	
24	and bring in the Patton Boggses of the world and the many		24	THE COURT: Is that right, Mr. --	
25	national firms --		25	MS. YOUNG: We have the same objection.	
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1	THE COURT: This is true of every law school that		1	THE COURT: -- Mr. Mastro?	
2	would have accepted anybody of Patton Boggs as a student.		2	MR. MASTRO: Nextant is his company.	
3	Without that, they wouldn't be here.		3	THE COURT: Sustained.	
4	MR. MASTRO: Your Honor, as an essential part of the		4	13.	
5	scheme, part the RICO scheme was to defraud -- to either get		5	(Pause)	
6	co-conspirators or to defraud them into investing and thereby		6	Anybody have anything to say?	
7	be able to support the ability to try to extort Chevron not		7	MR. MASTRO: Well, your Honor, the relevance of the	
8	only by continuing the Lago Agrio litigation but the		8	documents, I think your Honor --	
9	litigations around the country. And the common law fraud claim		9	THE COURT: I'm fully appreciative of why you want to	
10	that has been sustained was one of defrauding third parties to		10	see them.	
11	the detriment of Chevron. If we are correct that the documents		11	MR. MASTRO: Right.	
12	will show Burford, maybe Kohn, others felt that they had been		12	THE COURT: Which is not the same thing as relevance.	
13	defrauded at certain points into funding, that was integral to		13	MR. MASTRO: I understand, your Honor.	
14	the LAPs being able to continue their effort to extort Chevron.		14	But since at the heart of the conspiracy it was the	
15	THE COURT: Thank you.		15	RICO defendants colluding with government officials to procure	
16	I'm sustaining, for the time being anyway, the		16	a thumb on the scale of fraudulent judgment in Ecuador, the	
17	objections to 9 and 10, save that Patton Boggs will produce		17	communications with the government officials we believe are	
18	executed funding agreements.		18	highly relevant. We don't see how they could be privileged.	
19	11. Are you guys capable of agreeing as to whether		19	We don't see how there could be a sovereign immunity question.	
20	Andres Snaider is a lawyer or not?		20	And, you know, we therefore think that they should have to	
21	MR. MASTRO: Your Honor, he apparently at times in his		21	produce those documents.	
22	life was a lawyer but we do not believe he is functioning as a		22	THE COURT: Ms. Young.	
23	lawyer more recently and certainly not in the capacities in		23	MR. MASTRO: To the extent they have a privilege	
24	which he participated in this case. In his more recent life he		24	claim, they can put it on a categorical log.	
25	hasn't been, to our understanding, practicing law.		25	THE COURT: I don't understand that point.	

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1	MS. YOUNG: I just want to clarify that the sovereign		1	MS. YOUNG: Right. And the only allegations that	
2	immunity objection relates to a completely separate		2	Chevron has made relate to the judgment, the Cabrera motion,	
3	representation of Patton Boggs for the Republic of Ecuador, and		3	and, I think, the appeal. If they're willing to limit it to	
4	although in the meet-and-confer I believe Chevron loosely		4	those items, I believe we would be prepared to respond.	
5	stated it wasn't really interested in that, they haven't		5	THE COURT: Do you have a lot of these documents	
6	committed to narrowing the scope of the request. So that		6	relating to other --	
7	really relates to things separate from the litigation.		7	MS. YOUNG: No. But what we do have are a lot of	
8	THE COURT: Can you enlighten me? Because I take it		8	documents relating to Patton Boggs' analysis of Chevron's	
9	that since the document request is for documents regarding		9	allegations in that regard. So every time Chevron --	
10	Chevron for the Chevron litigations, it would be hard to		10	THE COURT: Just let me stay with your point and then	
11	imagine if there were a separate representation in an unrelated		11	I'll let you go on.	
12	litigation, or representation of the Republic of Ecuador, that		12	But you're saying if they had flagged two or three or	
13	you would have any responsive documents in connection with that		13	four specific documents, because those are the ones they know	
14	representation; isn't that right?		14	about -- there may or may not be others -- and your problem is	
15	MS. YOUNG: Understood. I mean, if it's related to		15	with your analysis of those. And the way you propose to solve	
16	the Chevron litigation --		16	that problem is have them tell you the ones they suspect are	
17	THE COURT: Or to Chevron.		17	problematic, which they've already told you. You know what	
18	MS. YOUNG: As we -- with that limitation, yes, we		18	those are because that's what you are giving right back to me.	
19	understand, and we'll respond as we've indicated.		19	And the point of their request is to find out if there are	
20	THE COURT: So that limitation is in fact not a		20	others that they don't know about yet, and you want me to cut	
21	limitation, it is the scope of the question in the first place.		21	that out.	
22	And so I take it, then, that there is no sovereign		22	MS. YOUNG: Well, as drafted, this would also get to	
23	immunity objection, right?		23	all of Patton Boggs' work done in connection with Chevron's	
24	MS. YOUNG: Correct.		24	allegations. If there is a way to carve that out so that we	
25	THE COURT: OK. Now, with that established, is there		25	don't have to log every single time that Patton Boggs weighed	
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1	any further reason why there is anything to sustain here? That		1	in or analyzed an allegation, that would be helpful.	
2	resolves the objection subject --		2	THE COURT: OK. Mr. Mastro, what about that?	
3	MS. YOUNG: That resolves the objection subject to the		3	MS. YOUNG: I just want to clarify also, it is not as	
4	privilege log.		4	if we've identified documents that do relate to advance	
5	THE COURT: OK. So the objection is overruled.		5	knowledge of the judgment or anything like that. We don't	
6	Number 14. This, I take it, is the specific question		6	believe that those exist at all.	
7	that underlay the earlier much more general request that we		7	MR. MASTRO: Right --	
8	talked about for quite some time. Right?		8	THE COURT: I mean, you know, the fact is if you limit	
9	MR. MASTRO: Yes, your Honor.		9	that specifically to the judgment, I don't know one way or	
10	THE COURT: OK. Any reason why I shouldn't overrule		10	another, but I certainly have seen documents in this case in	
11	this?		11	which, if memory serves, it was Mr. Fajardo saying to	
12	MS. YOUNG: Your Honor, this request relates to --		12	Mr. Donziger he knew exactly what the judge was going to do	
13	it's so overbroad and it relates to any official communication,		13	about either terminating judicial inspections or whom he was	
14	order, statement, ruling, report, judgment, sentencia, escrito,		14	going to appoint as the global expert, etc., etc., there surely	
15	providencia, edict, or other writing issued by the Lago Agrio		15	are documents. Now, I don't know if Patton Boggs has them and	
16	Court, and also includes the appeal.		16	so forth, but there are such documents that have emerged at one	
17	THE COURT: Yes. So?		17	point or another. I haven't seen many but there are some.	
18	MS. YOUNG: So, again, this goes to -- we've asked		18	Mr. Mastro.	
19	Chevron to specify and in particular orders or rulings or		19	MR. MASTRO: Yes. Correct, your Honor. But I don't	
20	judgments that they're interested in rather than pretty much		20	think the fact that we've been so diligent in discovery that we	
21	everything related to the Lago Agrio litigation.		21	have a sense of some of them now, I'm not a soothsayer. I'm	
22	THE COURT: Yes. But it is not everything related to		22	shocked at how many we are already aware of.	
23	the Lago Agrio litigation. It relates to the writing of court		23	I think that this is a pretty straightforward,	
24	documents issued by those courts. I mean, I, of course, I say		24	targeted request -- the writing, drafting of orders, opinions,	
25	"writing," there are more words, but it all amounts to that.		25	decisions by anyone in the Lago-related team. So they are the	

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1	ones who will know that. I was able to say "several" because		1	MR. MASTRO: Yes. Just one other thing, your Honor,	
2	of what we've been fortunate enough to be able to learn, but		2	just on 15, just to close the loop, and we will come back to	
3	they're going to know whether there are more. There could well		3	their affirmative defense.	
4	be more. And I shouldn't have to tell them what my (1)		4	It is also the case that among our allegations is the	
5	suspicions are or what else I may have done as a matter of my		5	Lago Agrio litigation was itself a fraudulent act or an attempt	
6	own work product to know. OK? They should know, and produce.		6	to get around the settlement and release agreements that would	
7	THE COURT: That objection is overruled.		7	have precluded it. So I just wanted to put that on the record,	
8	MS. YOUNG: Your Honor, may I just clarify?		8	your Honor, as to why it would be relevant to that.	
9	THE COURT: Yeah. Sure.		9	THE COURT: We are all indebted to you for that.	
10	MS. YOUNG: Are you expecting, in response to Request		10	MR. MASTRO: Thank you, your Honor.	
11	Number 14, that Patton Boggs will need to log all of its		11	THE COURT: Number 16. This is the two criminal cases	
12	internal communications relating to Chevron's allegations, as		12	that we were all dealing with at the beginning of all the	
13	opposed to documents evidencing the, you know, ghostwriting or		13	1782s, right?	
14	advance knowledge?		14	MR. MASTRO: Yes, your Honor.	
15	THE COURT: I'm expecting you to comply with this as		15	THE COURT: OK. So where are we on this?	
16	written.		16	MR. MASTRO: Your Honor, it's those criminal cases and	
17	MS. YOUNG: I believe as written it would seek		17	any attempts to initiate criminal investigations, that those	
18	documents that are purely Patton Boggs' analysis and not		18	ones obviously led to prosecution that later had to be dropped,	
19	evidence of some other fraud. Patton Boggs has spent a		19	and we think they are clearly relevant to the case. It was	
20	considerable amount of time analyzing Chevron's allegations		20	part of their scheme to get these Chevron --	
21	relating to ghostwriting and advance knowledge of things.		21	THE COURT: This all began before Patton Boggs was on	
22	THE COURT: I'm not elaborating on what I've said.		22	the job, right?	
23	Number 15. What the heck does this got to do with		23	MR. MASTRO: It did, your Honor, but Patton Boggs was	
24	anything, Mr. Mastro?		24	on the job when the criminal charges got dropped against the	
25	MR. MASTRO: Well, your Honor, it goes to affirmative		25	lawyers in Ecuador and may well have documents reflecting the	
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1	defenses that have been raised in this case.		1	back and forth on that. I think that it was widely recognized	
2	THE COURT: What the affirmative defense?		2	that on the LAPs-related team that the pendency of those	
3	MR. MASTRO: Well, they raised affirmative defenses		3	criminal charges reflected poorly on justice in Ecuador, and we	
4	relating to fraud where they accuse Chevron and its		4	believe that there will be relevant documents there. The	
5	predecessors of having engaged in fraudulent activity in		5	exchanges that Patton Boggs had with others about those cases,	
6	connection with the remediation.		6	or any other investigations that -- the criminal investigation	
7	THE COURT: What pleading are you referring to? And		7	that the LAPs were trying to get initiated against Chevron	
8	I'm also -- you know, let's suppose it is there. We'll then go		8	there.	
9	on to the question of what difference it makes.		9	THE COURT: Ms. Young.	
10	MR. MASTRO: Well, obviously, your Honor, we don't		10	MS. YOUNG: Patton Boggs was not involved in any	
11	think there was any fraud or failure to perform, so we wanted		11	effort to encourage prosecution of Chevron's attorneys in	
12	to see if they've got any beef there.		12	Ecuador, and Chevron knows that because it has Mr. Donziger's	
13	THE COURT: OK. On the subject of where is the beef,		13	files.	
14	what pleading and what defense?		14	You know, to the extent that Patton Boggs --	
15	MR. MASTRO: They are pulling it up now, your Honor.		15	THE COURT: Well, then you won't have many documents,	
16	That was one of the affirmative defenses that they alleged		16	right?	
17	alleging fraud.		17	MS. YOUNG: True. Although, you know, again, Patton	
18	(Pause)		18	Boggs had discussions about the criminal proceedings with its	
19	Well, we will pull it up for your Honor and give it to		19	co-counsel and internally, and I don't see any reason why	
20	you.		20	Patton Boggs should be burdened with reviewing and logging	
21	THE COURT: Do you want to come back to that?		21	those documents where they are not relevant to these	
22	MR. MASTRO: Yes. We will, your Honor.		22	proceedings.	
23	THE COURT: All right. Number 16. I take it the		23	THE COURT: What would you do differently if this	
24	criminal case is defined as the Veiga and Pallares; is that		24	request were in the case in the subpoena than you would do if	
25	right, Pallares?		25	it were not in terms of searching and things like that -- in	

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1	terms of searching?		1	Honor, what's the logical import of that? Criminal charges	
2	MS. YOUNG: In terms of searching, I think we would		2	were pending. The government prosecutor was already pursuing	
3	probably need to do a search for "criminal," using language		3	criminal charges. It means that Patton Boggs is telling the	
4	around "criminal," the word "criminal."		4	LAPs, who have such a cozy relationship with the government,	
5	THE COURT: And the incremental cost of sticking that		5	can't you see if you can make this go away. And they go to the	
6	one-word search term in there is what?		6	government and somehow make it go away. That's extremely	
7	MS. YOUNG: We don't have a figure on the incremental		7	relevant.	
8	cost of that figure alone.		8	And, your Honor, the premise of the question was	
9	THE COURT: Right. But it's got to be essentially de		9	that's not necessarily something that reflects poorly on Patton	
10	minimis, right? And so the difference is that if I leave it		10	Boggs. The discovery is to go after the RICO defendants. Now,	
11	in, you're going to get a certain number of hits that you		11	they are a co-conspirator.	
12	wouldn't otherwise have gotten, and then, presumably, somebody		12	THE COURT: I understand.	
13	is going to have to look at the hits and may have to schedule		13	MR. MASTRO: So we think it goes to the heart of the	
14	it.		14	case and the kind of things that went on in Ecuador, and that	
15	Mr. Mastro, why should I conclude that the likelihood		15	the very limited burden -- they don't suggest a huge number of	
16	that doing that will lead to anything of significance is		16	hits. We never heard about any kind of huge number of hits.	
17	sufficiently likely to go to the trouble?		17	We heard they don't think they have anything or much on this	
18	MR. MASTRO: Two reasons, your Honor. I don't think		18	subject. But if we get hits, even of the type your Honor	
19	that it's much of a burden at all, since they claim such a		19	describes, hugely relevant to us.	
20	limited universe.		20	THE COURT: Ms. Young, what about Mr. Mastro's last	
21	Two --		21	point?	
22	THE COURT: Well, it depends on how many hits.		22	MS. YOUNG: Well, first of all, the two attorneys were	
23	MR. MASTRO: Two, your Honor, it seems to me it is		23	1782 parties, and, therefore, I do believe a large number of	
24	extremely relevant. I didn't say, as Ms. Young implied, that		24	hits will result from this type of search. And it just adds to	
25	Patton Boggs was involved in the inception of trying to get		25	the burden of -- while, in and of itself it may be a small	
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1	them prosecuted. I said to the Court that Patton Boggs was on		1	number, it adds to the overall burden in responding to the	
2	the scene in an important role in the overarching litigation		2	subpoena.	
3	when the decisions were made to drop the criminal charges, so		3	THE COURT: Everything adds to the overall burden.	
4	they likely had communications with their colleagues.		4	That is true in a nine-document case.	
5	THE COURT: Right. I understand that.		5	MS. YOUNG: Right. With respect to whether -- I mean,	
6	Now, to hit a home run in this, what you would need to		6	if you will assume that Patton Boggs had some say or control in	
7	find -- and I don't suggest it exists, I don't know one way or		7	how the criminal proceedings unfolded in Ecuador, even if	
8	the other -- what you would need to find is the document in		8	Patton Boggs did say, oh, you know, these proceedings should go	
9	which somebody who was involved earlier says to Patton Boggs		9	away, that to me is not relevant to the RICO action. It	
10	this was a put-up job, the fix was in in Ecuador -- and, again,		10	certainly isn't -- getting them off the hook isn't a predicate	
11	I'm not saying that's the case, but you would have to hit that		11	act under RICO, and I just think that the burden here outweighs	
12	kind of a long ball, and it wouldn't reflect adversely on		12	any potential location of any relevant documents.	
13	Patton Boggs -- just a second -- if in fact, as you seem to		13	THE COURT: I am certainly not satisfied by the burden	
14	assume, they said, My God, stop it.		14	argument here, because there is really no basis for me to	
15	Isn't it much more likely that if we go down this path		15	conclude that the burden would be appreciable at all, the	
16	what happens is, putting aside all the work product issues and		16	incremental burden, so that's overruled. And the objection	
17	so forth, you come up with documents in which, whether on		17	altogether is overruled.	
18	recommendation of Patton Boggs or otherwise, a conclusion is		18	I think it's, you know, a reasonably close call as to	
19	reached that it would be really nice if these things went away		19	relevance, but I think the likelihoods are that it may be -- it	
20	because they were getting killed in the 1782 cases because of		20	is quite possibly probative of material issues in the case.	
21	the criminal prosecutions in Ecuador, certainly on timing, and		21	And so in the absence of a convincing reason not to allow it, I	
22	probably more broadly in some respects, and this is an		22	will allow it.	
23	unnecessary and unhelpful distraction in the United States?		23	OK. 17.	
24	Isn't that the more likely place it comes out?		24	MR. MASTRO: Once again, your Honor, we think this	
25	MR. MASTRO: Even if that's where it came out, your		25	goes to a central element of the RICO conspiracy. The RICO	

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1	defendants engaged in, you know, fraudulent testing,		1	THE COURT: Overruled.	
2	manipulative test results. They ran what they called a Selva		2	MR. MASTRO: Your Honor wanted to know where in the	
3	Viva lab out of a hotel room. They then used something called		3	complaint a reference is to --	
4	a Havoc lab that the crew depicts Donziger running in ex parte		4	THE COURT: Do you want to go back to that one? This	
5	to a judge to get him to vacate an inspection order because in		5	was number 15.	
6	his private documents he said it would be a disaster. And		6	MR. MASTRO: Yes. Number 15, your Honor.	
7	there was testimony that, you know, from Stratus and Sand made		7	THE COURT: I thought it was not in the complaint. I	
8	that they didn't even have equipment to do the tests they said		8	thought it was in a responsive pleading.	
9	they did.		9	MR. MASTRO: It's mentioned both in the complaint and	
10	THE COURT: These were the original judicial		10	in responsive pleading -- or I should say Donziger's proposed	
11	inspections, or something else?		11	responsive pleading. He alleges fraud in the remediation at	
12	MR. MASTRO: This, your Honor, includes both the		12	paragraphs 128 and 138. That's docket 561 -- 567-1. Of	
13	original judicial inspections and what the plaintiffs' team did		13	course, we hope that he will not be permitted to do that	
14	subsequently.		14	proposed amended answer and counterclaims because we have	
15	Their whole case, their whole PR campaign in this		15	opposed it on grounds of futility.	
16	Court, they've, oh, but there really was an environmental		16	But we also reference it with -- remediation fraud was	
17	disaster there. They called it Chernobyl and everything else.		17	the basis for the criminal indictments of the two Chevron	
18	Yet the tests they did were fraudulent; the scientific evidence		18	attorneys. We allege it as a RICO predicate, and it's in the	
19	wasn't there. You will recall Donziger and the crew outtakes		19	first amended complaint at paragraph 69 and paragraphs 199	
20	talking to his own experts just after they had briefed Cabrera		20	through 213. So it is directly related to the criminal charges	
21	prior to his appointment, Donziger turns to his experts after		21	that were brought and ultimately dismissed against the two	
22	they tell him the groundwater contamination evidence isn't		22	Chevron attorneys.	
23	there, he says: Don't worry about it. This is Ecuador. For		23	THE COURT: Let me get it in front of me.	
24	the Court, it's all smoke and mirrors and bullshit.		24	(Pause)	
25	So this is a central part of the fraud, to create the		25	What is the docket item of the amended criminal	
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1	fiction that there actually was evidence to support their		1	complaint?	
2	claims, when in so many respects the scientific evidence -- the		2	MR. MASTRO: The document number of the first amended	
3	genuine testing, even their own testing that wasn't fraudulent,		3	complaint is --	
4	showed that the environmental contamination they alleged, they		4	THE COURT: I got it. OK. Tell me the paragraphs	
5	trumpeted to the world, and they continue to trumpet to the		5	again, please.	
6	world, was not -- the evidence was not there, and that		6	MR. MASTRO: The paragraphs, your Honor, are	
7	certainly there was no environmental contamination attributable		7	paragraphs 69 and paragraphs 199 through 213.	
8	to Texaco 20 years before, having left the country and		8	(Pause)	
9	remediated before it left. So we think we're entitled to that		9	THE COURT: All right. Ms. Young, what about 15?	
10	evidence because it shows a core -- it debunks a core element		10	MS. YOUNG: With respect to 15, and, again, a number	
11	of their defense and proves a core element of our RICO		11	of others, your Honor, when you ordered Mr. Donziger to respond	
12	conspiracy -- the fraud, the big fraud, which was that they		12	to the subpoena, your reasoning was based on the fact that the	
13	lied about the science and there wasn't an environmental		13	proposed discovery focused on matters where Donziger was an	
14	disaster attributable to Texaco that occurred there in Ecuador.		14	actor and a witness. Here we have the exact opposite	
15	THE COURT: Ms. Young.		15	situation. We have a case where Chevron is seeking access to	
16	MS. YOUNG: This request, like several others, relates		16	information that Patton Boggs gathered the way attorneys	
17	to events that happened well before Patton Boggs' involvement		17	normally gather such information in the course of a litigation.	
18	in this litigation, and we believe that it is inappropriate for		18	THE COURT: Yes. I'm familiar with your argument and	
19	Patton Boggs to have to even respond to these or search for		19	I understand what your argument is, but, with respect, you have	
20	documents that relate to events that predate their involvement.		20	taken what I said out of context and you are attempting to	
21	You know, Patton Boggs was not a witness to these		21	misapply it here.	
22	events. If anything, it learned about the allegations relating		22	What I said was that, among other things supporting a	
23	to these events later.		23	deposition of Mr. Donziger under Section 1782, was that this	
24	THE COURT: That's the objection?		24	was a case that saw his knowledge as a percipient witness and a	
25	MS. YOUNG: Yes.		25	principal actor, right? That was not the basis on which I	

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1	ordered discovery. It was a factor I considered. And it's a		1	Lago Agrio Court, including the settling experts.	
2	relevant factor, all right, but it doesn't sweep the boards --		2	THE COURT: Who are the settling experts?	
3	not even close.		3	MR. MASTRO: They would have been persons appointed by	
4	MS. YOUNG: As we've --		4	the Court. Each side had their own experts and then there were	
5	THE COURT: I'm not finished.		5	settling experts --	
6	And was all made in the context of rejecting a		6	THE COURT: This is back in the judicial inspections	
7	Friedman argument that was made on behalf of Mr. Donziger.		7	era?	
8	Now, I do fully appreciate the broader point that you		8	MR. MASTRO: Correct, your Honor.	
9	are making, and I think in more than a few degrees the rulings		9	We gave a long list of the people in that category, so	
10	that I have made, a good many of which this morning have		10	this is not one where they don't know who we're talking about.	
11	avored you, took that into account in the equation that led me		11	So it included Cabrera and his technical team, but it also	
12	to the results I came to. But the simple fact that the		12	included, but not necessarily limited to, if they are aware of	
13	allegations -- excuse me, that the alleged fraud with respect		13	others in this category that we haven't listed, but we list the	
14	to the Texpet remediation and release predated Patton Boggs'		14	20 or so persons who fell into this category.	
15	arrival on the scene is not a get-out-of-jail-free card on		15	THE COURT: And this is all before Patton Boggs gets	
16	discovery. It may have learned things. Things may have been		16	involved, right?	
17	said to it that they may be protected by privilege; they may		17	MR. MASTRO: Your Honor, it is before they became	
18	not be protected by privilege. They may be work product; they		18	involved that these people were doing their work, but, your	
19	may not be work product. If they are work product, there maybe		19	Honor, as you know, Patton Boggs came on the scene to deal with	
20	be good cause shown for overcoming work product even in the		20	the crisis. So --	
21	absence of any crime fraud exception. Now, it just doesn't get		21	THE COURT: I understand. The Cabrera crisis?	
22	you all the way home.		22	MR. MASTRO: The Cabrera crisis, that related in part	
23	With that said, on this one I'm going to go your way,		23	to the difference between the joint judicial inspections and	
24	despite the fact that I'm not doing it on the basis that you		24	then going to a single global damage expert. So there are	
25	suggested. It is a factor but it is only one factor.		25	likely to be documents that Patton Boggs has, exchanges it had	
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1	The objection to 15 is sustained.		1	with co-counsel or others, about that process, about particular	
2	OK. I think we are up to 18, are we not? Maybe not.		2	experts, about communications with particular experts as they	
3	Yes. What happened to 17?		3	tried to salvage or resuscitate the fraud.	
4	There is no 17 on the joint submission that you guys		4	THE COURT: Ms. Young.	
5	gave to me.		5	MS. YOUNG: This is actually a category of documents	
6	MR. MASTRO: There is, your Honor. That was the		6	that I would like to talk about with more specifics about the	
7	fraudulent testing, your Honor.		7	burden on Patton Boggs.	
8	THE COURT: I thought that was 16. No, that was		8	First, as you just heard, there is a long list of	
9	criminal cases.		9	experts, and their involvement predated Patton Boggs'	
10	I see. Page 19 has gone awry on me. I'll find it.		10	involvement in the case.	
11	So we are up to 18. I found it. OK. What about 18?		11	We did a search -- I mean, just isolating Cabrera --	
12	MS. YOUNG: Patton Boggs has the same objection as to		12	obviously, he is the one that has been discussed the most	
13	the timing of the events that predated Patton Boggs'		13	here -- just looking at our top 22 document custodians' e-mail	
14	involvement.		14	only, there were over 33,000 documents relating to Cabrera.	
15	THE COURT: This one is overruled. This is right at		15	Within Patton Boggs' document management system, there were	
16	the heart of what the plaintiff is halfway home on with respect		16	another 11,000-plus documents related to Cabrera alone. That	
17	to the crime fraud exception -- or nearly halfway home, I		17	in and of itself is a huge burden, and those documents are	
18	should say.		18	likely to be only privileged documents, only documents where	
19	19. Now, Mr. Mastro, when you say "Court experts"		19	Patton Boggs is analyzing and dealing with Chevron allegations.	
20	here, I realize I could go back to the Mathison definitions,		20	So when we talk about burden and the burden of logging	
21	but just tell me who they are.		21	all of these communications, even where it is a categorical	
22	MR. MASTRO: Sure, your Honor.		22	privilege log, it still requires a significant amount of review	
23	THE COURT: Is this Cabrera? Is it Cabrera plus the		23	and analysis to comply with this request.	
24	cleansing experts, so-called, or is it a broader universe?		24	THE COURT: Right. Look, we got two questions here.	
25	MR. MASTRO: It refers to the experts appointed by the		25	We got Cabrera and we got everybody else.	

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1	Now, let's put Cabrera to one side. Cabrera was after		1	probable cause, whether particular documents are in furtherance	
2	this introductory point -- I mean, Cabrera is what this whole		2	of that fraud.	
3	fight has been about for a period of time. It's moved beyond		3	Now, it may well be that there are a lot in Patton	
4	it. It's broadened. But that was the flashpoint where this		4	Boggs' files, if indeed there are any, that aren't in	
5	really all blew up. Right?		5	furtherance; there may be others that are. I can't tell even	
6	And counsel is nodding yes.		6	how to approach that until and unless they are scheduled.	
7	MS. YOUNG: Yes.		7	So at least for now I'm going to overrule that	
8	THE COURT: And that there should be a lot of hits on		8	objection and we'll see where we get.	
9	Cabrera is not in the slightest surprising.		9	Number 20.	
10	Given the evidence so far, it also ought not be		10	MR. MASTRO: Yes, your Honor.	
11	surprising that the case for telling you to do the review and		11	THE COURT: Isn't this covered by something already,	
12	to proceed further with Cabrera without making a final judgment		12	or perhaps not?	
13	on it now is pretty compelling. But we're talking about a		13	MR. MASTRO: Yes, your Honor. I think there is	
14	whole bunch of other people that I never heard of before this		14	substantial overlap with number 14.	
15	morning except in generic terms, and I don't hear you saying		15	THE COURT: All right. So why shouldn't my ruling be	
16	anything about any likelihood of a lot of hits with respect to		16	the same on this one?	
17	them. And I don't have any reason to think that there is any		17	MR. MASTRO: It should be the same. It includes	
18	particular burden problem with respect to them, because they've		18	Cabrera-related submissions to the court is the only	
19	just not been a focus of any of the litigation that's been		19	difference.	
20	before me since 2010, I think.		20	THE COURT: OK.	
21	Why is that not a perfectly reasonable view?		21	MR. MASTRO: Thank you, your Honor.	
22	MS. YOUNG: Maybe that is an indication of the		22	THE COURT: And 21, also an overlap?	
23	relevance of these other experts.		23	MR. MASTRO: It looks like -- your Honor, it has	
24	THE COURT: Well, you may be right, first of all. And		24	overlap with 19, but it's more comprehensive about Cabrera and	
25	it may be, alternatively, that it is because Chevron hasn't		25	Cabrera's team and all documents relating to Cabrera and	
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1	figured out that there was other stuff going on with some of		1	Cabrera's team and his reports. It does appear to be, you	
2	these people.		2	know, within the scope of your prior rulings as an overall	
3	Now, I've got a complaint that alleges that there was		3	objection.	
4	corruption with this process in Ecuador, and this is a very		4	THE COURT: Don't you think it would have been a good	
5	logical place to look at it; isn't it?		5	idea to have read through this stuff before you served the	
6	MS. YOUNG: Again, the fact that it predates Patton		6	subpoena?	
7	Boggs' involvement in the litigation, you know, tells us that		7	MR. MASTRO: Your Honor, I think that there are some	
8	it is likely to only involve privileged communications and a		8	requests that overlap, so my apologies for that.	
9	large number of them, potentially.		9	THE COURT: All right. The ruling is the same as on	
10	THE COURT: Yes. But you are overlooking the fact		10	19.	
11	that there has effectively been, as I remember it, summary		11	I'll probably take a closer look at those three before	
12	judgment for the proposition that there was corruption in the		12	I sign an order and may modify it slightly, but unless you hear	
13	appointment of Cabrera, that Cabrera's report was in		13	otherwise, that's the ruling.	
14	significant degrees ghostwritten by Patton Boggs' clients, and		14	22. Uhl, Baron Rana & Associates?	
15	it is not illogical in those circumstances for a reasonable		15	MR. MASTRO: Your Honor, UBR was a consulting firm	
16	person to suspect, which I think is essentially the standard,		16	that was working for the plaintiffs and became an integral part	
17	that that may have happened before the global expert framework		17	of the Cabrera fraud because the plaintiffs basically	
18	came on the scene with earlier experts.		18	assigned --	
19	Now, they don't have to prove summary judgment to get		19	THE COURT: They gave him part of the Cabrera report,	
20	over that hurdle; all they have to prove is probable cause.		20	right?	
21	Now, I'm not there yet. I don't know whether we get there or		21	MR. MASTRO: Exactly. And they wrote it and they	
22	not. I want to hear you guys fully on that subject. But it's		22	passed him off in the Cabrera report as if he was part of	
23	not an unreasonable point of view to think it is possible that		23	Cabrera's technical team when he was really on the plaintiffs'	
24	we get there.		24	payroll.	
25	And then the next question is, assuming there is		25	THE COURT: I see.	

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1	MR. MASTRO: So we think it is highly relevant. They		1	So we would think it is clearly relevant. To the extent they	
2	are refusing to produce anything. They have been fighting		2	think there are privilege claims involved -- although these are	
3	tooth and nail on the 1782 in New Jersey and only produced some		3	testifying experts, hard to imagine what the privilege claims	
4	documents there. We are not asking them to produce the same		4	would be -- they can categorically log them.	
5	documents they produced in New Jersey, but we're trying to get		5	THE COURT: Well, but your request is for all	
6	the UBR-related documents and we have not yet gotten a full		6	documents relating to the work of these people.	
7	production there.		7	MR. MASTRO: Yes, your Honor.	
8	THE COURT: What about it, Ms. Young?		8	THE COURT: And that would include not just documents	
9	MS. YOUNG: First of all, Patton Boggs represents UBR		9	from UBR or -- I'm sorry, not UBR but the other persons, it	
10	in the 1782 proceeding that I believe is ongoing in New Jersey.		10	would include Patton Boggs' internal stuff, right?	
11	You know, I think it is more appropriate, since Chevron is		11	MR. MASTRO: Yes. But, your Honor, we believe and we	
12	pursuing the same discovery in that litigation, that it		12	hope that your Honor will ultimately rule that the whole	
13	continue to pursue it there and be bound by whatever rulings		13	cleansing expert process, as Judge Francis already ruled in the	
14	are made in New Jersey. It is entirely duplicative.		14	Count Nine case, was part of a crime fraud and privilege was	
15	THE COURT: The standards are different; right?		15	vitiated because that was part of the crime fraud. It was the	
16	MS. YOUNG: Your Honor, the standards may be		16	coverup of the Cabrera fraud and the attempt to whitewash it.	
17	different, but I believe the relevant documents that they are		17	So we believe there are internal communication on this	
18	seeking is all the same.		18	that will also not be privileged. We think it is an example	
19	THE COURT: That may be. But if they are entitled to		19	of -- it is not simply whether it was in furtherance of a crime	
20	them in one action and not in the other, the fact that the		20	fraud, and they didn't necessarily know that it was being used	
21	standards are different matters, doesn't it?		21	to further a crime fraud. Here they knew exactly what they	
22	MS. YOUNG: Chevron hasn't indicated what it believes		22	were doing, and they are the ones who engineered it to try to	
23	Patton Boggs has in its possession that it is not able to get		23	cover up the Cabrera fraud and to, you know, salvage the case	
24	through the 1782 action.		24	in a way that was a transparent, in our view, fraud at the end	
25	THE COURT: Do you normally when you seek discovery,		25	of the day.	
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1	Ms. Young, tell the other side what it is that you think you		1	So we believe that they should categorically log their	
2	can get from them that you don't otherwise have? I would		2	internal documents, and when your Honor makes a crime fraud	
3	answer that rhetorical question myself. I never heard of		3	ruling or reviews those internal documents you will see that.	
4	lawyers doing that.		4	I could be quoting chapter and verse of what we already have	
5	MS. YOUNG: No. But this is an unusual situation in		5	that I think establishes the whole cleansing expert process and	
6	which a law firm is being subpoenaed for client documents. I		6	the internal deliberations they had that were a crime fraud.	
7	think it is more appropriate for those documents to be sought		7	There have been a number of documents produce out of Donziger	
8	within the pending 1782 proceeding.		8	which I think go to this already. And Patton Boggs' lawyers	
9	THE COURT: Overruled.		9	admitting exactly what they were doing to cleanse, to try to	
10	23.		10	salvage the Cabrera fraud, and we think their own internal	
11	MR. MASTRO: Well, your Honor, again I think the		11	documents will be even more candid on this subject. So we	
12	relevance of the documents is clear. Patton Boggs is refusing		12	think this goes really to one of the hearts of the case,	
13	to produce anything in this regard even though this was an		13	because at the end of the day the judgment purports to rely on	
14	essential role it played in the conspiracy. It came up with		14	some of these folks who themselves relied on Cabrera and did	
15	the cleansing experts' concept and ran with it, and coordinated		15	nothing independent. So this really goes to the heart of the	
16	those cleansing experts to try and whitewash the Cabrera fraud,		16	fraud in Ecuador.	
17	even though those cleansing experts did no independent work,		17	THE COURT: Wasn't there disclosure that they did	
18	did not go to Ecuador independently. The Patton Boggs'		18	nothing independent?	
19	coordinating consultant wrote two of their reports -- never		19	MR. MASTRO: Their reports do not -- their reports are	
20	disclosed that. And those experts were never told about the		20	carefully crafted to give the impression that they reached	
21	lack of independence of the Cabrera report and largely		21	independent conclusions based on their own work. There are in	
22	piggybacked on what Cabrera did, which was not done by Cabrera		22	one or two them a reference to Cabrera, but they were carefully	
23	at all, it was done by plaintiff's consultants.		23	crafted, working with the Weinberg group, Patton Boggs	
24	So this is an essential part of the RICO conspiracy		24	hand-picked consultants to coordinate them and a group that	
25	and fraud claim that Patton Boggs engineered in every respect.		25	drafted two of those reports, such that when each of those six	

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1	cleansing experts actually testified, some of them expressed		1	Eric Westenberger from Patton Boggs, Edward Yennock from Patton	
2	shock that Cabrera wasn't independent. All of them admitted,		2	Boggs, and Jonathan Peck from Patton Boggs.	
3	well, I didn't actually do anything independently. Some of		3	THE COURT: And it was Mr. Westenberger whom you've	
4	them admitted they wouldn't have reached those conclusions or		4	identified at page 67, lines 19 and 20 of the transcript	
5	they viewed them as hypothetical conclusions based on premises		5	moments ago as your counsel; is that correct?	
6	that they were given, not on any independent work they did or		6	MS. YOUNG: I was referring to Patton Boggs, who is my	
7	any independent data they collected. They just used what was		7	client. I misspoke.	
8	in the Cabrera report, which was drafted by the plaintiffs and		8	(Pause)	
9	with their tainted data. So they didn't -- they weren't a		9	THE COURT: The objection is overruled. You can at	
10	model of clarity admitting how little they did or that they		10	least schedule the documents. Then we'll see whether there is	
11	weren't relying on anybody else.		11	crime fraud here.	
12	THE COURT: Thank you.		12	All right. I think this is a good point to break, and	
13	Ms. Young.		13	we will resume at 2:15 on Thursday.	
14	MS. YOUNG: Your Honor, a couple of points here.		14	OK. I thank you all. This has been moving better	
15	One is that these so-called cleansing experts		15	than I expected.	
16	certainly did disclose their reliance on the Cabrera data.		16	MR. MASTRO: Thank you very much, your Honor. I	
17	And, in fact, I think almost all of the listed individuals are		17	appreciate all the time.	
18	the subject of various 1782 proceedings around the country, and		18	THE COURT: Thank you.	
19	in none of those proceedings has the Court found a crime fraud		19	MR. MASTRO: Thank you.	
20	exception.		20	(Adjourned to 2:15 p m., Thursday, September 27, 2012)	
21	THE COURT: Judge Francis did, right?		21		
22	MR. MASTRO: So did the Weinberg court, your Honor,		22		
23	D.C.		23		
24	MS. YOUNG: As the Southern District of Ohio said in		24		
25	the Barnthouse 1782 action --		25		
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1	THE COURT: May I have an answer to my question?				
2	MS. YOUNG: I'm sorry, your Honor.				
3	THE COURT: Judge Francis did, correct?				
4	MS. YOUNG: I believe that finding was vacated, your				
5	Honor.				
6	THE COURT: By whom?				
7	MS. YOUNG: According to my counsel, with the Weinberg				
8	decision it was vacated.				
9	THE COURT: Judge Francis didn't write the Weinberg				
10	decision, did he?				
11	Counsel, do you know who Judge Francis is.				
12	MS. YOUNG: Yes, I do, your Honor.				
13	May I confer with my client for a minute?				
14	THE COURT: Yes.				
15	(Pause)				
16	MS. YOUNG: Your Honor, it is my understanding, after				
17	conferring with counsel, that Judge Francis relied entirely on				
18	your Honor's decision on crime fraud, which was vacated by the				
19	Second Circuit.				
20	THE COURT: I haven't rendered a decision on crime				
21	fraud, and no such decision has gone to the Second Circuit, let				
22	alone been vacated by it.				
23	Now, Ms. Young, would you identify the three other				
24	people at the table with you other than Mr. Leader?				
25	MS. YOUNG: I stand corrected, your Honor. This is				

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